



Appeal Decision

Site visit made on 5 July 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 July 2017

Appeal Ref: APP/V5570/F/17/3167620

The Hat and Feathers Public House, 2 Clerkenwell Road, London EC1M 5PQ

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Omenport Developments Ltd against a Listed Building Enforcement Notice (LBEN) issued by the Council of the London Borough of Islington.
 - The LBEN was issued on 22 December 2016.
 - The contravention of listed building control alleged in the notice is the painting of an advertisement on western flank wall (Appendix 1) and the painting of a mural on the northern flank wall (Appendix 2).
 - The requirements of the notice are as follows:
 - 1) Remove existing painted advertisement on the western flank wall and replace with 'off-white' coloured paint to match that on the southern and eastern flank walls of the Hat and Feathers Public House.
 - 2) Remove the statue/figure attached to the parapet wall above advertisement on western flank.
 - 3) Replace existing painted mural on the northern flank wall and replace with 'off-white' coloured paint to match that on the southern and eastern flank walls of the Hat and Feathers Public House.
 - 4) Remove all resultant debris and materials from the site.
 - The period for compliance with the requirements is 1 (one) calendar month.
 - The appeal is made on grounds (b) and (c) only, as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) as amended.
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Decision

1. The appeal is dismissed.

Background information

2. The listed public house is on a corner site, located at the junction of Clerkenwell Road and Goswell Road. The adjacent buildings have been demolished, leaving the Grade II listed building isolated for the time being, pending redevelopment. The vacant plots to the north and west were in use as a car park at the time of my visit and this was accessed from Goswell Road, with the Clerkenwell Road frontage being fenced off. There were painted images on the two exposed northern and western flank walls of the public house. The statue/figure, shown attached to the western parapet in Appendix 1 to the LBEN, had been removed.

3. The image on the northern wall was in the form of a multi-coloured, painted mural, showing people with umbrellas on a city street, against a background of high-rise illuminated buildings. The mural covered most of the first and the whole of the second and third floor levels of the wall. This coincided with the photograph at Appendix 2, attached to the LBEN. The image on the western flank was in the form of an advertisement for a bank/building society. On a bright blue background it showed a large reclining image of the cartoon character Fred Flintstone, with a

hamburger and a drink balanced on his midriff. The words '*Relax! Switching is easy*' were painted in red at high level above the reclining figure.

4. This advertisement differed from the one shown in Appendix 2 to the notice which was an advertisement for the film, '*Assassin's Creed*'. However, I do not consider that the change in advertisement content alters the essence of the allegation set out in the LBEN. The previous painted advertisement covered the entirety of the flank wall as does the one I have described above. I have, therefore, proceeded to determine the appeal on the basis that the LBEN is aimed at the two images (one a mural and the other an advertisement) as painted on the two flank walls. I am satisfied that this will not cause injustice to any party.

5. The appeal has been made on grounds (b) and (c) only and I am not empowered to consider whether or not listed building consent (LBC) - or advertisement consent (AC) for that matter - ought to be granted for the retention of the two images. I now turn, therefore, to the grounds pleaded.

The appeal on ground (b)

6. An appeal on this ground should be made on the basis that the matters alleged to constitute a contravention of section 9(1) or (2) of the PLBCAA have not occurred as a matter of fact. In support of this ground it is argued by the appellant that the adjacent buildings have been demolished; that the remaining wall is a party wall and that the curtilage of the listed building is halfway through the party wall. It is further argued, therefore, that the painted images '*belong to the building next door*' and that the LBEN '*does not include any area outside of its own curtilage*'.

7. However, these arguments are far from convincing and, in any case, relate to an appeal under ground (c) which I deal with below. With regard to ground (b) the critical words relate to the '*matters alleged (my underlining) to constitute a contravention*' and whether the allegation has occurred. At this stage it is not a question of whether or not what has occurred constitutes a contravention of listed building control. It is a simple question relating to whether or not the allegation is worded in such a way as to describe what the Council considers to be a contravention of listed building control.

8. I acknowledge that the appellant does not accept that the flank walls form part of the listed public house but the allegation is quite clear. It alleges the painting of an advertisement on the western flank wall and the painting of a mural on the northern flank wall. It is on this basis that I must consider this first ground of appeal. I saw both the mural on the northern elevation and an advertisement (albeit it a different one) on the western elevation. I did not see the statue/figure referred to in the allegation but the photographic evidence set out in Appendix 1 to the LBEN clearly showed that this had been in place. There is no evidence to indicate that this statue/figure was not in place at the time the notice was issued.

9. Thus, on the basis of the written submissions and from what I saw during my site visit, I can only conclude that what is *alleged* to have happened (as set out in Schedule 2 of the LBEN) has indeed occurred as a matter of fact. I now turn to the appeal on ground (c) and whether or not what is alleged to have occurred, or happened, constitutes a contravention of section 9(1) or (2) of the PLBCAA.

The appeal under ground (c)

10. The arguments that the work concerned '*was not part of the listed building*' are repeated. It is argued that the artwork was painted on '*the internal wall of the next door building – this being a party wall*'. It is contended that the same argument applies to both the rear and side of the listed public house. It is also indicated that

at the time of demolition the exposed brickwork (presumably to the flank walls of the public house) was stitched at the corners with columns to prevent weathering damage and that this does not detract from the wall being a party wall.

11. Frankly I find these arguments to be nonsensical. The painted images cannot possibly have been painted on the former wall or walls of adjacent buildings. These no longer exist and have long since been demolished. The images are clearly painted onto the altered flank walls of the public house. A party wall has various definitions within the Party Wall Act 1996 (PWA). The first is that it forms part of a building and stands astride the boundary; second that it separates buildings and either; (a) stands astride the boundary of different ownerships or; (b) that it stands wholly on the land under one ownership.

12. In essence this means that such a wall is used by two or more owners to separate their buildings. Based on the appellant's arguments it seems to be argued that this particular party wall stood wholly on the adjacent land but there can be no dispute that the original party wall between the public house and the adjacent buildings (in whatever guise or ownership), no longer exists.

13. However, the situation now is that there are no longer party walls to the northern and western gable walls to the public house. Furthermore, when the adjacent building(s) were demolished, the flank walls of the listed building would have been exposed and reference has been made to works being carried out to avoid weathering damage being caused to the listed public house.

14. The existing altered flank walls are now protecting the listed building and these walls have had various works carried out to make them wind and watertight, as well as structurally sound. Such works are common and to be expected in relation to the PWA and, as a matter of fact and degree, must have constituted some work being carried out to the remaining section of the walls which had formerly separated the buildings. Where alterations including the fixing of other materials or finishes to a listed building have taken place, the PLBCAA, at section 1(5)(a), indicates that '*listed building*' means a building which is for the time being included in a list.....; and for the purposes of this Act – (a) any object or structure fixed to the building'.

15. Thus, by virtue of the protective works being carried out, the painted flank walls now constitute a part of the listed building. Depending on the nature of the works LBC may have been required prior to the painting. There is nothing before me to suggest that a LBC application was made for the protection works to the exposed flank walls of the listed public house and I acknowledge that a simple making good and rendering of the flank walls might not be considered to have altered the character of the building.

16. There can be no dispute that the works went beyond the repair and rendering works, in that the applied painted images were also applied to the flank walls. The courts have held that even such relatively minor works (such as re-painting of a listed building) are capable of constituting both a development operation within the definition of development and an alteration for the purposes of the PLBCAA. The question remaining, therefore, is whether or not the overall works carried out to the flank walls has affected the character of the building as a building of special architectural and historic interest and thus, whether or not LBC was required.

17. Having seen the painted flank walls from both near and distant viewpoints due to their scale, content, colour and positioning, I consider that the works carried out have definitely affected the character of the listed building. I make no judgement as to whether the effect is harmful or not, since I am not considering whether to grant LBC for the works. But I am in no doubt that the large colourful mural and the

advertisement have both had a visual impact which has changed the way in which the listed building is perceived and have, therefore, altered its overall character as a building of special architectural and historic interest.

18. It follows that, in my view, a contravention of the PLBCAA has occurred because there is no LBC in place for the works as carried out. The appeal must also fail, therefore, on ground (c). This does not preclude the appellant from seeking to gain LBC for the works carried out.

Other Matters

19. In reaching my conclusions on the grounds of appeal I have taken into account all of the other matters raised by the Council and by the appellant. These include the appellant's final comments dated 6 June 2017 incorporating points relating to what constitutes the curtilage of the listed building; the fact that the adjacent buildings never formed part of the listed building; the references to the definitions of a party wall; references to the camera and lighting; the history of the various artworks on the site, the praise received and the fact that other LPAs have employed the same artists and that the reference to policies DM2.3, DM2.6 and CS9 are not relevant.

20. However, none of these alters my conclusions that firstly; what is alleged to have taken place has, in fact, occurred and, secondly, that the works carried out constitute a contravention of the PLBCAA. Nor is any other matter of such significance so as to change my decision that the appeal should fail.

Anthony J Wharton

Inspector